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VENTURE CHICAGO 28164
BRINKS HOFER GILSON & LIONE
P.O. BOX 10395
WASHINGTON DC 60610

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JUL 08 2008

OFFICE OF PETITIONS

In re Application of :
Guayan et al. :
Application No. 09/667,637 :
Filed: September 22, 2000 :
Atty Docket No. 10022/217 :

DECISION ON REQUEST
FOR REVIEW OF
PATENT TERM ADJUSTMENT

This letter is in response to the "REQUEST FOR REVIEW OF PATENT TERM ADJUSTMENT," filed February 28, 2008, pursuant to applicant's duty of good faith and candor. Applicants disclose that the initial determination of patent term adjustment of five hundred fifteen (515) days may extend the patent by too many days.

The request for correction of the initial determination of patent term adjustment (PTA) is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment at the time of the mailing of the Notice of Allowance is four hundred sixty-eight (468) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On November 29, 2007, the Office mailed the Determination of Patent Term Adjustment under 35 USC 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is five hundred fifteen (515) days.

The Office initially determined a patent term adjustment of five hundred fifteen (515) days based on an adjustment for PTO delay of six hundred sixty (660) days, pursuant to 35 USC 154(b) and

37 CFR 1.703(a)(1), reduced by four (4) days, thirty-three (33), and one hundred eight (108) days of applicant delay pursuant to 37 CFR 1.704(b).

Applicants assert that the PTA should be reduced by 61 days of additional applicant delay.

A review of the record reveals that Applicants should have been assessed an additional delay of sixty one (61) days. On January 14, 2004, a final rejection was mailed. Applicants in response filed a Request for Continued Examination (RCE) on June 14, 2004.

37 CFR 1.704(b) states, in pertinent part that:

An applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

Therefore, Applicants should have been assessed delay for the period from April 14, 2004, (three (3) months from the date that the final rejection was mailed on January 14, 2004), to June 14, 2004 (the date the RCE was filed), or 61 days.

It is further noted that 37 CFR 1.703(a)(4) states that the period of adjustment for Office delay includes the number of days, if any, in the period beginning on the day after the date that is four months after the date an appeal brief in compliance with § 1.192 was filed and ending on the date of mailing of any of an examiner's answer under § 1.193, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first.

On January 4, 2007, an appeal brief was filed. On May 18, 2007, a non-final Office action was mailed in response to the appeal brief. As the non-final Office action mailed on May 18, 2007, was mailed four (4) months and fourteen (14) days after the filing of the appeal brief on January 4, 2007, applicant is entitled to fourteen (14) days of patent term adjustment for Office delay in responding to the appeal brief.

In view thereof, the correct determination of PTA at the time of the mailing of the Notice of Allowance is four hundred sixty-eight (468) days (674 (660+14) days of PTO delay, reduced by 206 (4+61+33+108) days of Applicant delay).

As this letter was submitted as an advisement to the Office of an error in Applicant's favor, the Office will not assess the \$200.00 fee under 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

The application is being forwarded to the Office of Data Management for issuance of a patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Douglas I. Wood, Senior Petitions Attorney, at (571) 272-3231.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of adjusted PAIR calculation

Day : Thursday

Date: 7/3/2008

Time: 11:35:54

PALM INTRANET**PTA Calculations for Application: 09/667637**

Application Filing Date:	09/22/2000	PTO Delay (PTO):	660
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	145
Post-Issue Petitions:	0	Total PTA (days):	468
PTO Delay Adjustment:	-47		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
93	07/03/2008	ADJUSTMENT OF PTA CALCULATION BY PTO	14		
92	07/03/2008	ADJUSTMENT OF PTA CALCULATION BY PTO		61	
80	11/29/2007	MAIL NOTICE OF ALLOWANCE			
79	11/27/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
78	10/31/2007	ISSUE REVISION COMPLETED			
77	10/31/2007	DOCUMENT VERIFICATION			
76	10/29/2007	NOTICE OF ALLOWABILITY			
74	07/03/2007	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
73	08/23/2007	DATE FORWARDED TO EXAMINER			
72	08/14/2007	RESPONSE AFTER NON-FINAL ACTION			
71	07/03/2007	REFERENCE CAPTURE ON IDS			
70	07/03/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
69	07/03/2007	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
68	05/18/2007	MAIL NON-FINAL REJECTION			
67	05/14/2007	NON-FINAL REJECTION			
66	02/28/2007	APPEAL BRIEF REVIEW COMPLETE			
65	02/28/2007	DATE FORWARDED TO EXAMINER			
64	01/04/2007	APPEAL BRIEF FILED			
63	07/31/2006	NOTICE OF APPEAL FILED			
62	02/07/2007	CASE DOCKETED TO EXAMINER IN GAU			
61	10/06/2006	MAIL NON-FINAL REJECTION			
60	09/29/2006	NON-FINAL REJECTION			
59	04/27/2006	INFORMATION DISCLOSURE STATEMENT			

		CONSIDERED			
58	09/08/2006	DATE FORWARDED TO EXAMINER			
57	09/08/2006	MAIL APPEALS CONF. REOPEN PROSEC.			
56	09/05/2006	PRE-APPEALS CONFERENCE DECISION - REOPEN PROSECUTION			
55	07/31/2006	REQUEST FOR PRE-APPEAL CONFERENCE FILED			
54	07/31/2006	NOTICE OF APPEAL FILED			
53	05/31/2006	MAIL FINAL REJECTION (PTOL - 326)	22		48
52	04/27/2006	REFERENCE CAPTURE ON IDS			
51.7	04/27/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		108	48
51	04/27/2006	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
50	04/03/2006	FINAL REJECTION			
49	01/20/2006	DATE FORWARDED TO EXAMINER			
48	01/09/2006	RESPONSE AFTER NON-FINAL ACTION			
47	10/25/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
46	10/11/2005	MAIL NON-FINAL REJECTION			
45	10/03/2005	NON-FINAL REJECTION			
44	07/13/2005	DATE FORWARDED TO EXAMINER			
43	07/07/2005	APPEAL BRIEF FILED			
42	07/07/2005	NOTICE OF APPEAL FILED			
41	04/07/2005	MAIL FINAL REJECTION (PTOL - 326)	30		38
40	02/22/2005	FINAL REJECTION			
39	12/08/2004	DATE FORWARDED TO EXAMINER			
38	11/08/2004	RESPONSE AFTER NON-FINAL ACTION		33	35
37	11/08/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
36	11/08/2004	WORKFLOW INCOMING AMENDMENT IFW			
35	07/06/2004	MAIL NON-FINAL REJECTION			
34	06/28/2004	NON-FINAL REJECTION			
33	06/24/2004	DATE FORWARDED TO EXAMINER			
32	06/14/2004	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
31	06/24/2004	DATE FORWARDED TO EXAMINER			
30	06/14/2004	REQUEST FOR CONTINUED EXAMINATION (RCE)			

29	06/24/2004	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
28	06/14/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
24	06/14/2004	WORKFLOW INCOMING AMENDMENT IFW			
23	06/14/2004	WORKFLOW - REQUEST FOR RCE - BEGIN			
22	01/14/2004	MAIL FINAL REJECTION (PTOL - 326)			
21	01/12/2004	FINAL REJECTION			
20.7	10/27/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		0	18
20	10/27/2003	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
19	10/31/2003	DATE FORWARDED TO EXAMINER			
18	10/27/2003	RESPONSE AFTER NON-FINAL ACTION		4	17
17	07/23/2003	MAIL NON-FINAL REJECTION	608		-1
16	07/21/2003	NON-FINAL REJECTION			
15	07/15/2003	CASE DOCKETED TO EXAMINER IN GAU			
14	02/25/2003	CASE DOCKETED TO EXAMINER IN GAU			
13	04/23/2002	CASE DOCKETED TO EXAMINER IN GAU			
12	04/23/2002	CASE DOCKETED TO EXAMINER IN GAU			
11	03/08/2002	CORRESPONDENCE ADDRESS CHANGE			
10	03/08/2002	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
9	01/23/2002	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
8	01/22/2002	CORRESPONDENCE ADDRESS CHANGE			
7	01/22/2002	MAIL-RECORD PETITION DECISION OF GRANTED RELATED TO ATTORNEY			
6	12/28/2001	PETITION ENTERED			
5	06/19/2001	CASE DOCKETED TO EXAMINER IN GAU			
4	11/14/2000	APPLICATION DISPATCHED FROM OIPE			
3	11/14/2000	CORRESPONDENCE ADDRESS CHANGE			
2	10/18/2000	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	09/22/2000	INITIAL EXAM TEAM NN			

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Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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Attempted - not Known

Unclaimed	Unclaimed
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☒ Insufficient Address ☐ Vacant

☐ Moved not Forwardable

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